

§ 140.914 Credits for improvements.

(a) Credit shall be made to the project for additions or improvements which provide for higher quality or increased service capability of the operating facility and which are provided solely for the benefit of the company.

(b) Where buildings and other depreciable structures of a company which are integral to operation of rail traffic must be replaced, credit shall be made to the project as set forth in 23 CFR 646.216(c)(2).

(c) No credit is required for additions or improvements which are:

(1) Necessitated by the requirements of the highway project.

(2) Replacements which, although not identical, are of equivalent standard.

(3) Replacements of devices or materials no longer regularly manufactured and the next highest grade or size is used.

(4) Required by governmental and appropriate regulatory commission requirements.

§ 140.916 Protection.

The cost of essential protective services which, in the opinion of a railroad company, are required to ensure safety to railroad operations during certain periods of the construction of a project, is reimbursable provided an item for such services is incorporated in the State-railroad agreement or in a work order issued by the State and approved by FHWA.

§ 140.918 Maintenance and extended construction.

The cost of maintenance and extended construction is reimbursable to the extent provided for in 23 CFR 646.216(f)(4), and where included in the State-Railroad Agreement or otherwise approved by the State and FHWA.

§ 140.920 Lump sum payments.

Where approved by FHWA, pursuant to 23 CFR 646.216(d)(3), reimbursement may be made as a lump sum payment, in lieu of actual costs.

§ 140.922 Billings.

(a) After the executed State-Railroad Agreement has been approved by FHWA, the company may be reim-

bursed on progress billings of incurred costs. Costs for materials stockpiled at the project site or specifically purchased and delivered to the company for use on the project may be reimbursed on progress billings following approval of the executed State-Railroad Agreement or the written agreement under 23 CFR 646.218(c).

(b) The company shall provide one final and complete billing of all incurred costs, or of the agreed-to lump sum, within one year following completion of the reimbursable railroad work. Otherwise, previous payments to the company may be considered final, except as agreed to between the SHA and the railroad.

(c) All company cost records and accounts relating to the project are subject to audit by representatives of the State and/or the Federal Government for a period of three years from the date final payment has been received by the company.

(d) A railroad company must advise the State promptly of any outstanding obligation of the State's contractor for services furnished by the company such as protective services.

[40 FR 16057, Apr. 9, 1975, as amended at 40 FR 29712, July 15, 1975; 62 FR 45328, Aug. 27, 1997]

PART 172—PROCUREMENT, MANAGEMENT, AND ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICES

Sec.

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AUTHORITY: 23 U.S.C. 106, 112, 114(a), 302, 315, and 402; 40 U.S.C. 1101 *et seq.*; 48 CFR part 31; 49 CFR 1.48(b); and 2 CFR part 200.

SOURCE: 80 FR 29927, May 22, 2015, unless otherwise noted.

§ 172.1 Purpose and applicability.

This part prescribes the requirements for the procurement, management, and administration of engineering and design related services under 23 U.S.C. 112 and as supplemented by the Uniform

§ 172.3

23 CFR Ch. I (4–1–16 Edition)

Administrative Requirements For Federal Awards rule. The Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards rule (2 CFR part 200) shall apply except where inconsistent with the requirements of this part and other laws and regulations applicable to the Federal-aid highway program (FAHP). The requirements herein apply to federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) (related to construction) and are issued to ensure that a qualified consultant is obtained through an equitable qualifications-based selection procurement process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost. State transportation agencies (STA) (or other recipients) shall ensure that subrecipients comply with the requirements of this part and the Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards rule. Federally funded contracts for services not defined as engineering and design related, or for services not in furtherance of a highway construction project or activity subject to the provisions of 23 U.S.C. 112(a), are not subject to the requirements of this part and shall be procured and administered under the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements For Federal Awards rule and procedures applicable to such activities.

§ 172.3 Definitions.

As used in this part:

Audit means a formal examination, in accordance with professional standards, of a consultant's accounting systems, incurred cost records, and other cost presentations to test the reasonableness, allowability, and allocability of costs in accordance with the Federal cost principles (as specified in 48 CFR part 31).

Cognizant agency means any governmental agency that has performed an audit in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles (as specified in 48 CFR part 31) and issued

an audit report of the consultant's indirect cost rate, or any described agency that has conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). A cognizant agency may be any of the following:

- (1) A Federal agency;
- (2) A State transportation agency of the State where the consultant's accounting and financial records are located; or
- (3) A State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred in writing by the State transportation agency identified in paragraph (2) of this definition.

Competitive negotiation means qualifications-based selection procurement procedures complying with 40 U.S.C. 1101–1104, commonly referred to as the Brooks Act.

Consultant means the individual or firm providing engineering and design related services as a party to a contract with a recipient or subrecipient of Federal assistance (as defined in 2 CFR 200.86 or 2 CFR 200.93, respectively).

Contract means a written procurement contract or agreement between a contracting agency and consultant reimbursed under a FAHP grant or subgrant and includes any procurement subcontract under a contract.

Contracting agencies means a State transportation agency or a procuring agency of the State acting in conjunction with and at the direction of the State transportation agency, other recipients, and all subrecipients that are responsible for the procurement, management, and administration of engineering and design related services.

Contract modification means an agreement modifying the terms or conditions of an original or existing contract.

Engineering and design related services means:

- (1) Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services with respect